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C. DAWN CAUSEY
DIRECTOR, FINANCIAL INSTITUTION
AFFAIRS & COUNSEL

1120 Connecticut Avenue, NW
Washington, DC 20036
PHONE: (202)663-5434
FAX: (202) 828-5051

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Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552

RE: Office of Thrift Supervision, Repurchases of Stock by Recently Converted Savings Associations, Mutual Holding Company Dividend Waivers, Gramm-Leach-Bliley Act Changes; 12 CFR Parts 563b and 575; 65 Federal Register 43088. July 12, 2000; Attention Docket No. 2000-56.

Office of Thrift Supervision; Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form; 12 CFR Parts 563b and 575; 65 Federal Register 43092, July 12, 2000; Attention Docket No. 2000-57.

Dear Sir or Madam:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Notice of Proposed Rulemaking concerning Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions From Mutual to Stock Form ("Proposed Rule") and the interim final rulemaking on Mutual Holding Companies and Dividend Repurchases ("Interim Final Rule") issued by the Office of Thrift Supervision ("OTS") on July 12, 2000. The American Bankers Association brings together all categories of banking institutions to best represent the interests of the rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest banking trade association in the country.

ABA applauds the OTS efforts to promote mutual savings banks and savings associations. Mutual institutions are among the oldest forms of depository institutions designed to assist the common individual to save and achieve personal financial goals.

ABA applauds the OTS efforts to promote mutual savings banks and savings associations. Mutual institutions are among the oldest forms of depository institutions designed to assist the common individual to save and achieve personal financial goals. Mutuels have a long and illustrious history of contributing to the well being of their communities and the customers they serve. While their number has diminished, the current mutuels demonstrate the continued viability of the charter form.

ABA supports mutual savings institutions and to enhance that support, recently created a Mutuality Advisory Council ("Council") to further foster the mutual charter within the broad financial services industry that ABA represents. Our mutual members have chosen to maintain their mutual charter as the best competitive option for their market and their customers. ABA is pleased to present the Council's suggestions and opinions on the issues raised by both the Proposal and the Interim Final Rule.

The Proposed and Interim Final Rules

The proposed rule generally rewrites the mutual-to-stock conversion regulations into "plain English" and significantly modifies the role of the business plan in the process. Institutions considering conversion are required to pursue a pre-application process with their Regional Office to discuss the anticipated deployment and use of the conversion proceeds. An institution contemplating conversion must receive the prior non-objection to the conversion business plan in advance of actually making the filing. In addition, Mutual Holding Company ("MHC") formation is strongly encouraged by the Proposal and Interim Final Rule. The MHC form preserves the mutual character of the institution while granting greater flexibility to acquire new lines of business, pursue mergers, and compensate employees and directors. The Proposal modifies the current MHC rule to provide greater flexibility for management recognition and stock plan use and codifies the creation of charitable foundations as part of the conversion to stock.

The Proposal also highlights the anticipated guidance the agency expects to issue in the near term on capitalization, compensation, on-site examinations, and financial analyses of mutual institutions. In addition, OTS anticipates providing guidance on the payment of special dividends to depositors. ABA encourages OTS to issue this guidance in response to recent litigation and stands ready to assist the agency in its development. Mutuels need to be assured that any special dividends paid to depositors neither create additional depositor rights nor provide any greater leverage to force conversion from mutual to stock form.

The Proposal further notes the possibility of guidance being issued on the issue of management and director compensation. While the industry appreciates and supports the willingness of the agency to temper examiner zeal concerning review of director and officer compensation, ABA strongly suggests that most mutual institutions would prefer that the compensation standards applied to stock institutions in the Thrift Bulletins be applied to them rather than creating a new set of standards or a new review process.

Arbitrary limits or standards will not benefit the continued viability of the mutual charter. ABA encourages OTS to exhibit great caution before creating a separate standard for director and officer compensation in mutual institutions.

Specific Comment Issues

While ABA is encouraged by the efforts of the OTS to support the mutual charter form, it is important that these initiatives not become additional hurdles for mutuals to overcome. Mutuals, like stock institutions, need predictable processes that permit the boards and management to exercise sound business judgment. The choice to remain a mutual should be one that the institution makes without undue influence by outside forces, including the regulator. The following comments are offered on the specifics of the Proposal in furtherance of that goal.

1. **Timeframes.** The Proposal adds a new, pre-application process, to the mutual-to-stock conversion without any guidance as to the length of time the OTS Regional Office may take to process the new requirement. ABA encourages the OTS to remedy this omission. Inclusion of reasonable timeframes for the pre-application process will assist mutual institutions in their deliberations over the possibility of conversion. They will be better able to anticipate the costs, both human and monetary, and gain greater certainty. It would be unfortunate for a process that can take as long as eighteen months from filing to approval to stretch beyond two years while the Regional Offices evaluate the prudent deployment of estimated proceeds.
2. **Business Plan Standards.** The Proposal attempts to create a benchmark standard for business plans as the regional OTS offices review them. The plans are to include a complete description of the proposed deployment of conversion capital, demonstrate feasibility, discuss the risks, and address managerial resource requirements. In addition, the business plan should discuss the institution's record of success and experience in implementing prior growth or expansion initiatives. Moreover, the business plan must demonstrate the ability to realize a "reasonable return on equity." This is defined, "at a minimum," to "exceed, by a margin reflecting relative investment risk, the institution's rates on long-term certificates of deposit." Stock price appreciation, returns of capital or repurchases of stock may not be included in the "reasonable rate of return" calculation. Further, "[m]anagement must provide for consistent, sustainable returns to satisfy long-term investor expectations." These are tall orders for the best stock performers let alone newly minted stock companies.

ABA appreciates that the OTS seeks to ensure that boards of directors of mutual institutions have fully investigated and evaluated the conversion to stock form. ABA also appreciates the desire of the OTS to ensure that institutions prudently deploy conversion proceeds. However, the standards OTS seeks to employ in these tasks are unrealistic and may be unattainable. Worse, the converting institution must demonstrate that it can achieve these standards without reference to basic financial

management tools such as stock appreciation and repurchases of stock. Indeed, in the later case, this is an area of inconsistency between the two rulemakings. The Proposal would not allow repurchases of stock to be included in the business plan of a converting mutual for three years. Yet, a converted mutual may under the Interim Final rule repurchase stock one year after conversion.

ABA urges the OTS to modify this portion to recognize the difficulty with this proposed measurement. A reasonable rate of return in a non-inflationary environment is different than a reasonable rate of return during a high inflationary period. In short, the OTS seeks to require not just a successful initial stock offering (not all stock offerings experience the initial "pop"), but to have the institution guarantee a continuing success such that long-term investors would not pressure management to consider sale of the institution. ABA understands the regulatory concern over the continued consolidation among savings institutions. However, ABA suggests that such regulatory efforts are contrary to the best interests of the shareholders and are inappropriate factors to apply at the time of the conversion application. Accordingly, ABA urges the OTS to modify the proposed standard to permit institutions to use all of the tools available including stock repurchases after one year and to set a more realistic standard for rates of return.

To do otherwise exposes the institutions to creative litigation by disgruntled shareholders claiming that the institution did not reach its artificially high, but required, performance goal. This potential may cause institutions to attempt investments or other activities that pose greater risk in order to achieve the mandated rate of return. Creating a regulatory incentive to reach for yield is inconsistent with the OTS's concerns for safety and soundness. For all of these reasons, ABA urges the OTS to reconsider this standard and provide a more realistic, consistent with safety and soundness, approach. The standard as proposed has great potential for mischief while failing to achieve its regulatory goal.

3. **Creation of Foundations.** ABA supports the codification of the ability of converting institutions to establish charitable foundations as part of the conversion process. This innovation provides another alternative for converting institutions to deploy the conversion proceeds in a manner that invests in their hometowns and communities. It deserves regulatory recognition and standardization of its process. Investments in foundations should also be recognized for CRA purposes.
4. **Management Stock Benefit Plans.** ABA supports the Proposal's changes in the areas of management recognition and stock option plans. The changes recognize the almost automatic shareholder approval of accelerated vesting in management recognition and stock option plans in the case of death, disability, or a change in control and the need for flexibility in the administration of stock option plans. The concerns that motivated the 1994 regulatory change in this area were simply not

present. Elimination of this post-conversion step will save the converted institution significant costs.

5. Mutual Holding Companies. The Proposal provides for greater flexibility at the MHC level for those institutions choosing to remain mutual in some manner. ABA supports these types of initiatives and encourages the OTS to promulgate more guidance on the use of the MHC charter to acquire other institutions and businesses. While there have recently been one or two creative acquisitions by mutual institutions, the agency could do more to encourage further innovation by clarifying the requirements and steps for a MHC to combine with any number of other companies and institutions. Even the basic acquisition of another mutual institution by a MHC poses interesting questions. This type of guidance is needed to give existing MHCs and mutuals the confidence that their investment in creative and innovative strategies will not run into regulatory roadblocks.

Further, ABA supports the ability of MHCs to offer employees stock option plans up to the full amount (10 percent of the minority stock issuance) at the time of MHC creation. This flexibility allows management to provide employee incentives on a more predictable basis. However, ABA suggests that OTS provide further flexibility in this area. The maximum amount available for employee stock options is 4.9%. Once completely used, there is no other stock available for new employees. ABA encourages OTS to explore the possibility of permitting MHCs to use repurchased or Treasury stock for employee benefit plans. This option would permit a fully committed stock plan greater flexibility without disadvantaging the minority shareholders.

While many of the MHC revisions are designed to give greater flexibility, one provision actually restricts MHCs. OTS proposes to limit the amount of conversion proceeds that the MHC may retain to fifty percent (50%). While there may be some surface appeal to this provision, it is important to remember that most acquisitions occur at the holding company level. Indeed, the very reason a mutual creates a MHC is to facilitate creative acquisitions and business strategies. For this reason, an artificial limit may be counterproductive to the very purpose of the MHC. If the OTS genuinely supports the MHC as a viable business structure for mutual institutions, it must not constrain the structure with arbitrary restrictions. ABA urges OTS to remove the 50% limitation.

6. Electronic Filing. The Proposal maintains the long-standing requirement that applications be filed by hand with a total of seven copies (the original and three conformed copies with OTS in Washington, D.C. and three conformed copies with the appropriate Regional Office). In this age of electronic commerce and digital signatures, it may be time for the OTS to consider incorporating the alternative of electronic filing for its forms and applications. While there are logistical issues, the perpetuation of a paper-based applications process is inconsistent with the direction

of many government-wide initiatives including many by the U.S. Department of the Treasury. The rewrite of the conversion regulations is an opportune moment to further embrace the electronic age. ABA encourages OTS to permit electronic filing of these and other applications and forms. We note that there are current instances where the agency does permit, even require, electronic filing (i.e., Thrift Financial Report). This is one more area where the agency could expand this approach.

Specific Questions Posed

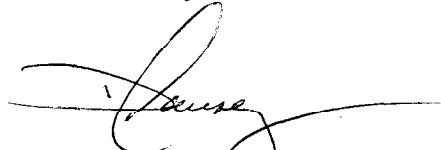
The Proposal asks a number of questions for comment. While not the full list, the following provides ABA's suggestions in a number of the requested areas.

1. How can the OTS make the MHC form more attractive? As noted above, ABA believes that the issuance of guidance on the types of combinations possible with the MHC form will stimulate interest and further creativity on the part of the mutuals. The OTS has not been as encouraging in the past and this history has served to inhibit greater exploration of the MHC form.
2. Should reorganization into MHC or Mid-tier form require a vote of the members? OTS is correct that no such reorganization has failed. This is an instance where form has triumphed over common sense and ABA supports elimination of this requirement.
3. Should mutual institutions be permitted to affiliate with other mutual institutions in order to leverage managerial and administrative resources? ABA is aware of one instance where this type of arrangement worked particularly well (North Carolina); ABA is also aware of failed attempts to affiliate in other parts of the country. This issue is unique to each situation in which it is presented. The circumstances surrounding the North Carolina affiliation made business sense. It is important to remember that although couched in the phraseology of affiliation, the North Carolina situation is an acquisition, albeit a unique one. As such, it is already permissible. What the question raises is whether the OTS is contemplating permitting a mentoring arrangement between mutuals as is used in the credit union industry. Certain types of small credit unions are advised and supported by their larger brethren. ABA suggests that such a possibility is beyond the scope of the Proposal and would require further discussion and development.
4. What is the level of interest in creating bankers' banks focused on the needs of mutuals? ABA suggests that the industry has already created such an institution in Massachusetts under the existing structures. As the model exists, the issue is one of critical mass necessary to maintain a successful bankers' bank.
5. How can OTS make it more attractive for mutual institutions to stay in mutual form? As noted above, remaining mutual is a choice each institution makes on a daily and yearly basis. That choice should be free of arbitrary and outside pressures whether by

professional depositors, consultants or regulators. What the OTS can do to ease this decision is to provide a stable and fair regulatory framework that neither holds mutuals hostage nor unfairly disadvantages depositors. Providing a predictable and rational method to change charters is also important. Arbitrary requirements, unrealistic business plan standards, and lengthy processes do not provide comfort that a mutual will continue to have the freedom to choose another charter form. Freedom to choose the business model that works best to serve the needs of customers is essential to remaining competitive and viable. OTS is to be congratulated for taking this step. More remains to be done and ABA welcomes the opportunity to be a part of the process.

Thank you for this opportunity to share the views of ABA and in particular, its Mutuality Advisory Council. If you have any questions concerning the issues raised by this letter or wish to discuss further issues surrounding mutual institutions, do not hesitate to contact the undersigned at 202/663-5434 or Paul C. Katz, Director, Membership, at 202/663-5126.

Sincerely,



C. Dawn Causey